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Letter dated 15 April 2008 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

The special report of the Secretary-General on the United Nations Mission in Ethiopia and Eritrea (S/2008/226) is submitted, as stated in its paragraph 2, to set down the context in which the developments leading to the temporary relocation of the Mission evolved and recount pertinent events since the signing by Eritrea and Ethiopia, in Algiers, of the 18 June 2000 Agreement on Cessation of Hostilities and the 12 December 2000 Comprehensive Peace Agreement.

After a careful reading of the special report, my Government noted several omissions and in some instances incorrect assertions and assumptions; particularly the circumstances surrounding the departure of the United Nations Mission in Ethiopia and Eritrea, the status of the Temporary Security Zone and the completion of the Boundary Commission's work. The purpose of my letter is not to go to every detail of the report but to highlight the most relevant facts in order to have a factual account and a balanced report on the basis of the Algiers Agreements. The elements mentioned below are taken from the Algiers Agreements and from previous reports of the Secretary-General and their annexes. Their addition to the report would therefore set the record straight and complete the report. In this regard, I would kindly request that the following be read together with the special report:

Paragraphs 7, 13 and 16

- The Commission shall not have the power to make decisions ex aequo et bono (article 4(2) of the Algiers Agreement)

Paragraph 18

- On 8 June 2007 Ethiopia communicated its acceptance of the Eritrea-Ethiopia Boundary Commission (EEBC) decision without precondition, yet on 6 and 7 September 2007 during the EEBC meeting, Ethiopia reiterated its precondition by insisting on discussions on demarcation (S/2007/645, annex II)

Paragraph 20 (S/2007/33, annex II, S/2006/992, enclosure)

- Ethiopia's insistence on changing the Commission's delimitation decision since April 2002 and its demand for negotiation of the decision

- Ethiopia obstructed the Commission's field personnel and prevented them from carrying out the necessary investigations in the field and made a "cooperative process" impossible, including impeding the survey of ground control points for the aerial photography
- Ethiopia persistently maintained a position of non-compliance with its obligations in relation to the Commission (refusal of financial contribution to the Trust Fund, failure to provide security arrangements for freedom of movement of all demarcation personnel and refusal to appoint liaison officers)
- Ethiopia's failure to comply with the Commission's order of 17 July 2002 requiring it to arrange for the return to Ethiopian territory of those persons in Dembe Mengul who were moved from Ethiopia pursuant to an Ethiopian resettlement programme since 13 April 2002; and Ethiopia's non-compliance with regard to reporting to the Commission on this order by 30 September 2002
- Ethiopia's insistence on introducing "neutral bodies" into the demarcation process
- Ethiopia's rejection of invitations to attend meetings called by the Boundary Commission on several occasions
- Eritrea's acceptance of all the conditions presented by the Commission for the resumption of demarcation as expressed during the EEBC meeting in Septembe. 2007 (S/2007/645)

Paragraph 20 (S/2005/142)

- "The Commission is taking immediate steps to close down its Field Offices. These can be reactivated (though subject to some months of lead time) if Ethiopia abandons its present insistence on preconditions for the implementation of the demarcation. As for the Commission, it remains ready to proceed with and complete the process of demarcation whenever circumstances permit." (S/2005/142, annex I, para. 32)
- Ethiopia's threat to withdraw from the Algiers Agreement (S/2007/645)

It must also be underlined that my delegation finds the observations of the Secretary-General presented in paragraph 47 unresponsive to and incongruous with prevailing reality. As emphasized in the letter of President Isaias Afwerki of 25 March 2008 to the Secretary-General (S/2008/200, annex) EEBC has "completed its task by implementing the demarcation of its 'final and binding' award through a methodology that does not leave any loopholes. In the event, any explicit or implicit endeavour to question or dilute the 'validity' of the award, and the demarcation effected accordingly would be tantamount to circumventing legality and the rule of law".

The fact is that the boundary between Eritrea and Ethiopia has not only been delimited but it has also been demarcated without ambiguity by the sole authority mandated to carry out the task in accordance with the provisions of the Algiers Agreement. As the letter of President Afwerki outlined, "Whether pillars are placed along the border or not is in fact immaterial for all legal and practical purposes. It is doubtful whether there is a single case in the African continent where the boundary

has been delimited and demarcated with as much clarity and precision as the boundary between Eritrea and Ethiopia." In the circumstances, Eritrea cannot understand or accept this academic game of contemplating "various scenarios and options in the abstract" when the first and foremost responsibilities of the Security Council must be to ensure Ethiopia's compliance with its treaty obligations and ensure the evacuation of its occupation from sovereign Eritrean territories.

Furthermore, a reference, in the opening sentence of paragraph 47, to Eritrea's military occupation of the Temporary Security Zone betrays the extent to which critical facts and events are liberally misconstrued in the report. The presence of some Eritrean troops in their own territory cannot constitute military occupation by any stretch of the imagination. The Temporary Security Zone, which lies inside Eritrea, was never created as a permanent buffer zone and its status has changed with the completion of the Boundary Commission's work last November despite Ethiopia's failure to respect its commitment to the Algiers Peace Agreement.

The report misses another opportunity to affirm the importance of the supremacy of rule of law, which could have contributed positively to regional peace and security.

I would be grateful if the present letter could be circulated as a document of the Security Council.

(*Signed*) Araya **Desta**
Ambassador
Permanent Representative